place in Singapore and the relevant appropriation to the various charities is also made in Singapore. The application, however, of such appropriated funds takes place, in my opinion, in the State of Bombay where these various charities are situated.

I am not dismayed by the fact, as submitted by learned counsel for the trustees, that by such an interpretation I am equating the term "application" to "payment", because it seems to me that it is, in effect, the matter of payment with which subsection 3(2)(b) is concerned.

Moreover, even if I am wrong in my view that there is no ambiguity and that "application" is equated to "payment" and not to "appropriation" there remains the consideration whether, in that event, the words of restriction could fulfil any useful purpose.

By this I mean that I find it difficult to envisage any case in which funds are appropriated or selected for allocation outside the Malayan Peninsula which could conceivably attract corporation duty. If I am right in this then it follows that the words of restriction would be tautologous; and one would naturally avoid an interpretation which would lead to that result.

Even if, as learned counsel for the trustees suggested might possibly be so, there is the odd, rare case in which the situation envisaged in the preceding paragraph could arise, one would naturally prefer, according to the normal rules of interpretation, to favour a construction that is of general application as against one applicable to such a very special, even hypothetical, set of circumstances.

For the reasons that I have given I am of the opinion that the position adopted by the Commissioner of Estate Duties is correct and that duty is payable in respect of the income applied to these charities in Bombay; and the declarations asked for by the trustees of the estate must be refused.

Costs of all parties be taxed as between solicitor and client and paid out of the estate of the testator.

Order accordingly.

Solicitors: *Rodyk & Davidson; Allen & Gledhill; State Advocate-General.*

K.M. OLI MOHAMED v. SIM SOO PHUANG & ANOR.

[C.A. (Rose C.J., Tan Ah Tah and Wee Chong Jin JJ.) October 25, 1962]

[Singapore — Civil Appeal No. 10 of 1962]

Landlord and Tenant — Recovery of possession — Claim under Control of Rent Ordinance (Cap. 242), s.15 (1)(d) & (h) — Whether includes matters arising under Municipal Ordinance and Local Government Ordinance — Local Government Ordinance, 1957, s.221(1).

In this case the respondents claimed possession of the premises known as No. 611, North Bridge Road, Singapore, under section 15(1)(d) of the Control of Rent Ordinance on the ground that the appellant had used the said premises for an illegal purpose, i.e., the storing of cinematograph films without a licence contrary to section 221(1) of the Local Government Ordinance, 1957. The appellant had been the tenant of the premises in question for many years and these premises had never been licensed as a place for storing cinematograph films. On June 8, 1959, a fire broke out in the backroom of the first floor of the said premises, and as a result the premises was badly damaged.

In the court below it was contended by counsel for the appellant that "illegal" in section 15(1)(d) of the Control of Rent Ordinance "connotes an absolute prohibition as distinct from an act which is disapproved by the law": there was no absolute prohibition against storing cinematograph films as one could do so with a licence; further it was contended that "guilty" in that paragraph implied criminal guilt and that a conviction was necessary as in England. The learned judge held that "illegal" there meant "not sanctioned by law" or "contrary to law". To store cinematograph films in premises not licensed for that purpose was contrary to section 221(1) of the Local Government Ordinance and was to use the premises for an illegal purpose. On appeal to the Court of Appeal,

Held: (1) having regard to paragraph (h) of section 15(1) of the Control of Rent Ordinance, matters arising under the Municipal Ordinance, the Local Government Ordinance or other matters of that kind were intended to be excluded from the purview of section 15(1)(d);

(2) the respondents having at the commencement of the trial abandoned their alternative claim under paragraph (h), the judgment of the learned trial judge must be set aside.

COURT OF APPEAL.

H. E. Cashin and *N. A. Christopher* for the appellant.

S. K. Lee for the respondents.

Rose C.J.: The matter to be decided falls within a narrow compass and raises only a point of interpretation relating to section 15(1)(d) of the Control of Rent Ordinance (Cap. 242).

The respondents claim possession of the premises in question on the ground that the appellant had used the premises for an illegal purpose, in that contrary to the provisions of section 221(1) and (2) of the Local Government Ordinance (No. 24 of 1957) he had stored certain cinematograph films without a licence from the Local Authority. The relevant entry in the Fifth Schedule is (t), i.e. the manufacture, storage or treatment of cinematograph or other films.

Section 15(1)(d) of the Control of Rent Ordinance reads as follows:—

"15.— (1) In the case of all premises such an order or judgment as is referred to in section 14 of this Ordinance may be made in any of the following cases, namely:—

x x x

(d) where the tenant or any other person occupying the premises under him, has been guilty of conduct constituting a nuisance or persistent annoyance to persons in the same building; or of using or permitting the use of the premises for illegal or immoral purposes."

On the face of it the wording would seem to be sufficiently wide to cover the present case, but learned counsel for the appellant submits

that, having regard to section 15(1)(h), matters relating to the Municipal Ordinance or the Local Government Ordinance or any similar matter should be excluded from the operation of section 15(1)(d).

Section 15(1)(h) reads as follows:—

" (h) where the tenant or any other person occupying the premises under him has knowingly committed a breach of any written law regulating any business carried on upon the premises or of any provision of the Municipal Ordinance or of any rule or by-law made thereunder affecting the premises which exposes the landlord to any penalty, fine or forfeiture."

Assistance is, perhaps, to be derived from a consideration of section 14(1)(d) of the former Control of Rent Ordinance, 1947 (No. 25 of 1947) which reads as follows:—

" 14.— (1) No order or judgment for the recovery of possession of any premises comprised in a tenancy shall be made or given except in the following cases, namely:—

(d) where the tenant or any other person occupying the premises under him, has been guilty of conduct constituting a nuisance or persistent annoyance to persons in the neighbourhood; or of using or permitting the use of the premises for illegal or immoral purposes; or of the breach of any written law under which any business is carried on upon the premises; or has caused substantial damage to the premises."

It is to be noted that in this paragraph there is specific reference to the breach of any written law under which a business is carried on upon the premises.

It is, in my opinion, unnecessary to say more than that in accordance with the ordinary rules of interpretation it would seem that matters arising under the Municipal Ordinance, the Local Government Ordinance or other matters of that kind are intended to be excluded from the purview of section 15(1)(d).

Such an interpretation, according to accepted canons, does no violence to the language of the two paragraphs and, moreover, would appear to be in accordance with the practice that has hitherto been adopted in these matters.

It follows, therefore, that the respondents having at the commencement of the trial abandoned their alternative claim under section 15(1)(h), the judgment of the trial Court must be set aside and judgment entered for the appellant, with costs here and below.

Tan Ah Tah and **Wee Chong Jin JJ.** concurred.

Appeal allowed.

Solicitors: *N. A. Christopher; S. K. Lee.*

GOVERNMENT OF THE FEDERATION OF MALAYA v. A. OMNIBUS CO. LTD.

[P.C. (Lord Jenkins, Lord Guest and Lord Pearce) November 13, 1962]

[Privy Council Appeal No. 16 of 1961]

Income Tax — Company deducting from dividends paid to shareholders income tax than that payable for year of assessment — Whether excess debt due to Government — Income Tax Ordinance, 1947, ss.10, 26 and 40 — Interpretation of s.40.

This was an appeal from the decision of the Federation Court of Appeal ([1961] M.L.J. 92).

During the year of assessment 1956, the respondent company purported to deduct from dividends paid to its shareholders income tax which exceeded by $7,793 the tax payable by the company in respect of that year of assessment. If such tax was in fact deducted, any excess is admittedly a debt recoverable as such by the Government under the Income Tax Ordinance unless there was a balance of tax paid or payable by the company in respect of previous years which fell to be taken into account. The government claimed from the respondent company the said sum as debt due to it by virtue of section 40(4) of the Ordinance. Smith J. gave judgment for the amount claimed. The Court of Appeal in reversing the judgment of Smith J. held that there was in fact no deduction of tax and, on the true construction of section 40, no excess creating any debt. On appeal,

Held: although the respondent company could by deduction (or deemed deduction) of tax from dividends paid to shareholders recoup itself for any tax payable and although a running account is allowed whereby the company could carry forward any amounts for which it had hitherto failed to recoup itself in respect of tax payable by it in previous years yet as soon as it collects from its shareholders more tax than it had to pay, the excess becomes due to the government because there was no provision by which it can retain the excess and carry forward any amounts for which it had hitherto failed to recoup itself in respect of tax payable by it in previous years.

Judgment of the Court of Appeal set aside, and the judgment of Smith J. restored.

Observations on section 40 and particular hardship it may cause in certain cases.

Case referred to:—

(1) *Neumann* v. *Commissioners of Inland Revenue* 18 T.C. 332.

PRIVY COUNCIL APPEAL.

H. H. Monroe, Q.C. (*J. Holroyd Pearce* with him) for the appellant.

F. N. Bucher, Q.C. (*R. Buchanan-Dunlop* with him) for the respondent.

The judgment of the Lords of the Judicial Committee of the Privy Council was delivered by,

Lord Pearce: The Government of the Federation of Malaya claims from the respondent company 7,793 dollars as a debt due to it by